

'Playing by Foucault's rules: Golder's Foucault and the politics of rights' [Review] Ben Golder (2015) Foucault and the politics of rights

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Playing by Foucault's Rules:

Ben Golder's, *Foucault and the Politics of Rights*

(Stanford: Stanford University Press, 2015. 264 pages. From \$24.97. Paper ISBN 9780804796491)

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'Is there not some other way of playing the game that consists neither of acquiescence and reproduction nor of utter refusal, that is neither wholly dialogical nor utterly polemical – some way of using rights to *play a different game*, perhaps?' (Golder, 116)

Foucault's rules of a different game are clear and constant throughout his work; they are *critique* and *resistance*. In *Foucault and the Politics of Rights*, Ben Golder appropriates these rules to tell us about the different, and tactical, game of rights that Foucault encourages us to play – a game Golder calls 'a **critical counter-conduct of rights**'. This clever phrase captures how rights can be understood *differently* and so be used as *tactical* instruments, or tools, of *resistance* in political struggles. Of course, 'rights' have a different meaning to the juridical concept of entitlement here; they are, rather, both tainted with and promising of an ambivalence, which means they can and must be tactically re-claimed towards a different strategy. Golder thus respects the overarching idea of critique as a permanent attitude of thinking differently that is oriented towards the possibility of becoming otherwise. And he is faithful to Foucault's own position that, with respect to possibilities (even in rights) 'resistance comes first.' Resistance is thus a creative process that allows us to change how we conventionally think rights and a critical call to change the game, one that Golder advocates so well in his book. This is a book which is not only **beautifully conceived but gracefully written** and through

which Golder has made a remarkable intervention into the field of Foucault studies, human rights and political theory. I can see it being of immense value to researchers and students of Foucault on rights and on Foucauldian critique alike.

In playing Foucault's different game of 'critical counter-conducts', the book asks a set of interpretative and directly political questions. In terms of the former, Golder asks, **what is a Foucauldian politics of rights and how is it to be understood in light of his work as a whole?** To address the latter he asks, what is the value of Foucault's critical and tactical interventions into rights discourse? How might a Foucauldian politics of rights avoid being coopted into the hegemonic discourse of rights? And what is gained and lost in embracing the Foucauldian politics of rights? Do we forego the possibility of thinking an alternative to rights? These questions feed into the two main aims of the book: first, to explain the notion of a 'Foucauldian politics of rights' by exploring the late Foucault; and, second, to explore the possibilities and the limits of such a politics.

Golder engages in a meticulous examination of the late Foucault and his engagement with rights. He goes to great lengths to refute the so-called 'turn' that Foucault made to rights after the mid-1970s and to instead show, on the one hand, how there is continuity and development of Foucault's previous methods and concerns in his rights talk and, on the other hand, to evidence when, where and how Foucault talked about rights (as counter-conduct). His efforts are highly convincing. We are left persuaded that **Foucault's 'curious deployment of rights' is not curious at all** (13). The idea of Foucault as a rights theorist might seem unlikely given the two central thematic concerns of his previous work – the decentering of a sovereign, universal (rights-bearing?) subject and the critique of sovereign power in favour of disciplinary, biopolitical and governmental power relations, which would also coopt rights as a form of power relation. Chapter 1 ('Critical Counter-Conducts') presents Golder's reading of

Foucault's challenge to these two underlying presuppositions of liberal rights theory. Following the recognisable division of Foucault's 'oeuvre' into archaeological, genealogical and ethical phases, Golder traces the consistency in Foucault's conceptions of critique and resistance that lead him to understanding power as governmentality, and the subject as capable of an ethics of the self. The 'problematic of governmentality' as concerned with conduct is also then concerned with *counter*-conduct (which he explains as stemming from the 'counter-strokes' Foucault identified against the form of conduct defined as pastoral power) (54). Counter-conduct forms a continuous and consistent way in which Foucault engages with rights, for two reasons: the first is chronological – the particular 'fragment'¹ of thought that Foucault was interested in from the mid-1970s onwards, counter-conduct (see in particular the *Security, Territory, Population* lecture series) coincides with his interest in rights. The second reason is that counter-conduct, as the next step in Foucault's thought, is also a refinement of his previous theorisations on power and resistance. Counter-conduct helps explain how rights are at once forms of regulation and of resistance; how they might be used to *penser autrement* and to play a different game (see 41).

Foucault's engagement with rights is thus ***ambivalent* (in that it sees rights as simultaneously 'liberatory and subjectifying'), *ungrounded* (in that it lacks a naturalized subject of rights) and *strategic* (in so far as rights promise possibilities as tactical political instruments)**. These three dimensions of a critical counter-conduct of rights form the backbone of Chapters 2, 3 and 4 of Golder's book. Chapter 2 ('Who is the Subject of (Foucault's Human) Rights?') explores the contingent and ungrounded nature of rights. Reading Foucault alongside Judith Butler and Jacques Rancière, Golder questions the 'human' of Foucault's human rights. Golder substantiates

¹ Foucault refers to the absence of any coherent whole in his work, describing his 'researches' as 'just fragments, and it is up to you or me to see what we can make of them' – see Michel Foucault, 'Two Lectures' in M Foucault, *Power/Knowledge* (C Gordon, ed; C Gordon and others, trs) (Longman, London 1980) 78, 78-9; and, Foucault, *Society Must Be Defended*, 3.

his reading with three examples from Foucault's invocation of rights discourse: his criticism of Bazargan's post-revolutionary regime for its failure to honour pre-revolutionary promises in the aftermath of his visit to Iran in 1978; his support for the Polish solidarity movement; and that more well-known statement 'Confronting Governments', given to mark the creation of the International Committee against Piracy in 1981 and in which Foucault advocates a right of the governed (76-78). Foucault's contingent or ungrounded subject is, he concludes, one that is capable of ethical self-formation. Rather than presupposing a subject of rights or naturalizing a certain figure of humanity, he thus occupies the human of rights *differently*. Foucault's is a performative account of rights claiming; quoting Foucault, Golder explains, 'it is because I defend myself that my rights exist'. (80) Far from being impaired by the absence of a 'subject', this leaves human rights open to multiple possibilities of the human. Yet, are these possibilities hampered by the very dynamics of rights claiming; that is, is there something within the very modality of a right that contours and circumscribes the possibilities of the human? This ambivalent quality of rights is the subject of Chapter 3 ('The Ambivalence of Rights').

Rights are unavoidably emancipatory and regulatory. Golder uncovers this paradoxical potential of rights with help from Wendy Brown and by examining how Foucault problematizes rights to sexuality. The way in which Golder unearths interviews Foucault gave in the early 1980s on the sexual identity, sexual choice and sexual will to interrogate whether and when the ambivalent logic of rights will present a useful means for political struggle is both fascinating and masterly. (104-7) The right to (choose one's) sexuality, while important, is nonetheless a disciplinary tool that must be re-appropriated in a political move. The political task that rights demand and enable is not (only) to claim a juridical right but to create, innovate and 'become' – in this instance/example, to create

culture, to become gay.² To the more familiar ‘new right’ (of the governed) that Foucault propounded in ‘Confronting Governments’, Golder thus excavates the idea of rights as ‘truth-weapons’, critical tools for political subjects to protect and advance their interests, and a **‘new relational right’** (97, 107). This relational right is a relation to self and others, an ethics; it can enable transformation and new affective relationships. As Golder notes, Foucault has a ‘queer’ affective possibility in mind, which he labels ‘friendship’ (108). The new relational right, and creating **friendship as a way of life**, therefore opens up exciting new possibilities to ‘carve out a [new] space’ for individuals to not only *assert rights* to (sexual) identity but to *go a step further* and ‘elude’ the normalizing effects of categories into which ordinary claims to rights place them (i.e. ‘gay man’) (108-9). The new relational right can thus be used as counter-conduct. Golder has therefore successfully not only traced Foucault’s lesser known later engagements with rights but explained how rights when seized as counter-conducts offer possibilities for new relations and relationships, and a new way of life.

Rights are then tactical instruments that can be part of a broader strategic struggle, as Golder explains in Chapter 4 (‘Rights Between Tactics and Strategy’). He traces the language of tactics and strategy from Clausewitz to Gramsci to Foucault, to conclude that rights are ‘the tactic called in aid of the strategy of an aesthetics of existence’. (138) Not only can individual rights be used to articulate political struggle (in fact, this is not, according to a critical counter-conduct of rights their main aim) they can be used to play a different game – that is, to articulate a different *mode of life*. Golder illustrates how this is possible, or promised, using the example of the right to die, or suicide. The exercise of a right to die, when read through a critical counter-conduct lens, has a performative effect; we change ourselves in the process and become otherwise. It is also and moreover ethical conduct, in that this right can be understood as an aesthetic

² See Foucault, ‘Sex, Power and the Politics of Identity’, 163-4.

and creative act. Foucault, Golder proves, thus approaches the right to die tactically (i.e. using it as a tool) to provoke us to rethink our lives and how we want to live them under biopolitical care. And in doing so, he forms a strategy – one of rupture, where the game of rights is played differently, for different ends (a new mode of life rather than tolerance respect or equal treatment). That this is a deliberately crafted strategic game is further proved through Golder’s exploration of the death penalty in Foucault’s work. Here Golder explains how Foucault strategically retreats from a tactical use of rights to assert that recourse to the language of rights will not advance the cause of abolition (138-9). Foucault is thus, Golder concludes, a ‘strategic political thinker’ (147).

In his Conclusion, Golder returns to **two big questions that formed the basis of the interrogation in his book: first, how can we explain Foucault’s ‘turn’ to rights and, second, what is the something *more* that Foucault gives us – and how might it speak to our contemporary political concerns?** Has Golder fulfilled his mission in answering these interrogations? In terms of the first question, he most definitely has. Foucault’s thought fragments on rights have been explained and ordered as a consistent and flowing body of work, as *rules for how to tactically do rights* almost, that Golder names a ‘critical counter-conduct of rights’. This means that rights can be used to mean and to be otherwise. However, Golder does not feign presenting ‘a unified and systematic “theory” of rights’.³ To the contrary, he substantiates his formulation of ‘critical counter-conducts’ by reading Foucault alongside current thinkers who problematise the place of rights in contemporary politics. This wider engagement hints at the utility of Foucault’s ‘tool-box’ by pointing to how he has been appropriated by other ‘users’ (e.g. Brown) and also offers supplements to these tools (e.g. Rancière) that widen the breadth of (his) critique of rights. In terms of the second question, the something *more* that Golder roots out in Foucault’s work on rights is how to play a different game;

³ Golder, 23.

the rules, for Foucault, have always been the same: play with a *critical* attitude and *resist*. Golder succinctly elaborates these rules into contingency, ambivalence and tactics/strategy. I also think his reference to the ‘new relational right’ adds an ethical dimension to the rights game that has so far been missing from contemporary accounts of Foucault on rights.

The something more that Foucault adds is also, Golder says, not ‘what’ he said (about power, the subject and rights) but ‘how’ he approaches his work. **This way of thinking, the critical attitude, is something we can take into our own work. I would only question whether Golder has done this himself.** Despite his scrupulous account of Foucault (on rights), does *he* think rights today differently using the critical attitude of a critical counter-conduct of rights? The absence of empirical discussion of contemporary rights debates or case studies betrays his call to permanent critique and the kind of ‘pessimistic activism’ it necessitates (1-3). Also, **although Golder asserts he is not interested in asking ‘what would Foucault do *today*?’ (and this perhaps would be his answer to the ‘criticism’ I just made), he perhaps focuses too much on *what* Foucault has said.** There are points at which the book feels like a homage to Foucault. **Perhaps, to use Foucault’s own terms, we have ‘a right to be free’ of *Foucault* to the extent that we make his work ‘protest and groan’ in an effort to continue the game of permanent critique and resistance.**⁴ In this spirit of permanent critique, one of Golder’s final assertions is that ‘It may well be that a Foucauldian strategy towards rights today actually counsels a retreat from the terrain of rights’ (161). This seems a somewhat bizarre turn to take given the effort spent in the previous 160 pages to prove the value of rights for political struggle. The point is unsatisfyingly undeveloped, and whilst I understand that it is in the nature of the critical

⁴ See Michel Foucault, ‘Prison Talk’ in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (C Gordon ed, C Gordon and others trans) (Longman, London, 1980) 37, 53-4 on Foucault’s response to his use of Nietzsche.

attitude to be dissatisfied, surely the essence of (Foucauldian) critique is not to search for an alternative (to power/the ungrounded, ambivalent and tactical form of rights) but for ‘*problématiques*’ – to create ruptures in the relations of power that we cannot escape but can ‘make otherwise’, to play a different game. Saying this, these observations of mine can, I’m sure, easily be countered. Golder begins, ‘This is a book about Foucault and the politics of rights’. In his presentation of how Foucault did rights, how we can understand this work as a critical counter-conduct and how we must continue the work by searching ‘not for solutions but provocations’,⁵ he has written just that book. And in doing so, he has challenged us to play, albeit within Foucault’s rules, a different game.

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⁵ Golder, 161.